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Draft of Emergency Powers Continuation Act

JOINT RESOLUTION

1 To continue in effect certain statutory provisions for the duration of
2 the national emergency proclaimed December 16, 1950 notwithstanding the
3 termination of the existing state of war.

4 WHEREAS, the existing state of war with Japan is the last declared state
5 of war to which the United States is a party and the termination thereof
6 and of the national emergencies proclaimed in 1939 and 1941 would render
7 certain statutory provisions inoperative; and

8 WHEREAS, some of these statutory provisions are needed to insure the
9 national security and the capacity of the United States to support the United
10 Nations in its efforts to establish and maintain world peace:

11 Now, therefore, be it

12 Resolved by the Senate and House of Representatives of the United
13 States of America in Congress assembled:

14 Sec. 1. Notwithstanding the termination hereafter of the war with Japan
15 declared December 8, 1941 (55 Stat. 795) and of the national emergencies
16 proclaimed by the President on September 8, 1939 (Proc. 2352, 54 Stat. 2643)
17 and on May 27, 1941 (Proc. 2487, 55 Stat. 1647) and notwithstanding any proc-
18 lamation of peace with respect to such war:

19 (a) The following statutory provisions shall remain in full force and
20 effect during the continuance of the national emergency proclaimed by the
21 President on December 16, 1950 (Proc. 2914, 15 F.R. 9629) or until such

22 earlier date or dates as the President may by proclamation determine.

1 generally or for a particular statutory provision or the President either
2 generally by proclamation or for a particular statutory provision may pro-
3 vide, any other terminal date or provision of law with respect thereto to
4 the contrary notwithstanding:

5 (1) Act of December 17, 1942, ch. 739, section 1, 56 Stat. 1053,
6 as amended (50 U.S.C. App. 1201).

7 (2) Act of May 18, 1933, ch. 32, section 5(m), 48 Stat. 62
8 (16 U.S.C. 831d(m)).

9 (3) Act of March 27, 1942, ch. 199, sections 1301-1304, 56 Stat.
10 185-186 (50 U.S.C. App. 643, 643a, 643b, 643c).

11 (4) Act of July 7, 1943, ch. 192, section 11, 57 Stat. 382
12 (44 U.S.C. 376).

13 (5) Act of June 22, 1944, ch. 268, section 102, 58 Stat. 285, as
14 amended (38 U.S.C. 693b). Any detail made hereunder may extend for
15 six months after the national emergency proclaimed by the President
16 on December 16, 1950, or until such earlier date as the Congress,
17 by concurrent resolution, or the President may provide.

18 (6) Act of June 24, 1948, ch. 625, section 4(d), 62 Stat. 607, as
19 amended by subsection 1(g) of P. L. 51, 82nd Congress (50 U.S.C. App.
20 454(d)).

21 (7) Act of July 2, 1940, ch. 578, sections 1(a) and 1(b), 54
22 Stat. 712, 713, as extended by sections 13 and 16 of the Act of
23 June 5, 1942, ch. 340, 56 Stat. 317 (50 U.S.C. App. 773, 776, 1171a,
24 1171b).

25 (8) Act of June 5, 1942, ch. 340, sections 1, 7 and 11, 56 Stat. 314,
26

1 (9) Act of July 1, 1944, ch. 373, sections 212 and 216, 58 Stat.
2 689-691 (42 U.S.C. 213, 217).

3 (10) Act of January 2, 1942, ch. 645, section 7, as added by the
4 Act of April 22, 1943, ch. 67, section 7, 57 Stat. 67 (31 U.S.C. 224i).

5 (11) Act of June 28, 1944, ch. 306, section 22, 58 Stat. 624, as
6 amended (10 U.S.C. 1214; 34 U.S.C. 555b).

7 (12) Act of March 7, 1942, ch. 166, sections 1-12, 14, 15, 56
8 Stat. 143-147, as amended (50 U.S.C. App. 1001-1012, 1014, 1015),
9 and as extended by section 4(e) of the Act of June 24, 1948, ch. 625,
10 62 Stat. 608.

11 (13) Act of December 4, 1942, ch. 674, sections 2 and 3, 56 Stat.
12 1039 (10 U.S.C. 904b, 904c).

13 (14) Act of Oct. 26, 1942, ch. 624, 56 Stat. 987 (50 U.S.C. App. 836).

14 (15) Act of December 18, 1942, ch. 765, 56 Stat. 1057 (10 U.S.C.
15 906 and note, 907 and note).

16 (16) Act of September 16, 1942, ch. 561, sections 1-3, 56 Stat.
17 753, as amended (50 U.S.C. 301-303).

18 (17) Act of June 25, 1942, ch. 447, 56 Stat. 390-391 (50 U.S.C.
19 App. 781-785).

20 (18) Act of October 14, 1940, ch. 862, 54 Stat. 1125, as amended,
21 sections 1, 202, 301, 401, 402 and 501 (42 U.S.C. 1521, 1532, 1541,
22 1561, 1562, 1571). In view of the continuing existence of acute
23 housing needs occasioned by World War II, the emergency declared by
24 the President on September 8, 1939 shall, for the purpose of contin-
25 uing the use of property held under said Act of October 14, 1940,
26 continue to exist during the continuance of the national emergency

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1 earlier date as the Congress by concurrent resolution or the President
2 may provide.

3 (19) Act of December 18, 1941, ch. 593, Title I, 55 Stat. 838, 839
4 (50 U.S.C. App. 601-605).

5 (20) The paragraph designated "(2)" which was inserted into the
6 Act of March 3, 1909, ch. 255, 35 Stat. 753, by the Act of April 9,
7 1943, ch. 39, 57 Stat. 60 (34 U.S.C. 533).

8 (21) Act of October 25, 1943, ch. 276, 57 Stat. 575, as amended
9 by section 2 of the Act of April 9, 1946, ch. 121, 60 Stat. 87
10 (38 U.S.C. 11a and note).

11 (22) Act of December 23, 1944, ch. 716, 58 Stat. 921-922 (50 U.S.C.
12 App. 1705-1707).

13 (23) Act of June 27, 1942, ch. 453, 56 Stat. 461 (50 U.S.C. App.
14 801, 802).

15 (24) Act of December 22, 1942, ch. 803, 56 Stat. 1071 (48 U.S.C.
16 510 note).

17 (25) Act of October 17, 1940, ch. 888, section 512, 54 Stat.
18 1190, as amended (50 U.S.C. App. 572).

19 (26) Blank

20 (27) Act of April 24, 1912, ch. 90, sections 1 and 2, 37 Stat.
21 90, 91, as amended (36 U.S.C. 10, 11).

22 (28) Act of August 29, 1916, ch. 417, 39 Stat. 604 (10 U.S.C.
23 1362 and 49 U.S.C. 6(8)).

24 (29) Act of August 29, 1916, ch. 418, section 1, 39 Stat. 645
25 (10 U.S.C. 1361).

1 (30) Act of February 4, 1887, ch. 104, section 1(15), as enacted
2 by Act of February 28, 1920, ch. 91, section 402, 41 Stat. 456, 476
3 (49 U.S.C. 1(15)).

4 (31) Act of February 4, 1887, ch. 104, section 420, as added by
5 Act of May 16, 1942, ch. 318, section 1, 56 Stat. 284, 298 (49 U.S.C.
6 1020), insofar as it refers to section 1(15) of said Act of February 4,
7 1887, as amended.

8 (32) Act of June 6, 1941, ch. 174, 55 Stat. 242-245, as amended
9 (50 U.S.C. App. 1271-1275).

10 (33) 18 U.S.C. 794, 2153, 2154 and 2388.

11 (34) Act of May 22, 1918, ch. 81, 40 Stat. 559, as amended by the
12 Act of June 21, 1941, ch. 210, 55 Stat. 252, 253 (22 U.S.C. 223-226b).

13 (35) Act of October 31, 1942, ch. 634, sections 1 and 2, 56 Stat.
14 1013 (35 U.S.C. 89,90).

15 (36) Act of July 1, 1944, ch 373, section 211(c), 58 Stat. 688,
16 as amended (42 U.S.C. 212(c)).

17 (b) The following statutory provisions which are normally operative
18 in time of peace shall not become operative upon the termination of the
19 state of war with Japan but rather shall continue to be inoperative during
20 the national emergency proclaimed by the President on December 16, 1950,
21 or until such earlier date or dates as the Congress by concurrent resolution
22 or the President may provide either generally or for a particular statutory
23 provision, any other provision of law with respect thereto to the contrary
24 notwithstanding:

25 (1) Those portions of section 37 of the Act of June 3, 1916, ch. 134

26 29 Stat. 489, as amended (10 U.S.C. 353), which restrict the appointment

1 of reserve officers in time of peace.

2 (2) The second sentence of section 40b of the Act of June 3, 1916,
3 as added by section 33 of the Act of June 4, 1920, ch. 227, 41 Stat.
4 777, as amended (10 U.S.C. 386).

5 (3) Act of August 4, 1942, ch. 547, section 10, 56 Stat. 738
6 (34 U.S.C. 8501).

7 (4) Act of March 3, 1893, ch. 212, 27 Stat. 717 (34 U.S.C. 196).

8 (5) Act of June 16, 1890, ch. 426, section 4, 26 Stat. 158
9 (10 U.S.C. 651).

10 (6) Joint Resolution of November 4, 1939, ch. 2, section 7,
11 54 Stat. 8 (22 U.S.C. 447(a)-(d)).

12 (c) The President is hereby authorized to continue in effect for the
13 duration of the national emergency proclaimed by the President on December 16,
14 1950, all appointments under the provisions of sections 37 and 38 of the Act
15 June 3, 1916, ch. 134, 39 Stat. 166, and section 127a of said act, as added
16 by the Act of June 4, 1920, ch. 227 (41 Stat. 785), as amended (10 U.S.C. 358,
17 32 U.S.C. 19, 10 U.S.C. 513); section 515(e) of the Act of August 7, 1947,
18 ch. 512, 61 Stat. 907 (10 U.S.C. 506d(e)); and section 3 of the Act of August 21,
19 1941, ch. 384, 55 Stat. 652, as amended (10 U.S.C. 591a), which are in effect
20 on the date of the approval of this Act as officers and warrant officers
21 of the Army of the United States and as officers and warrant officers of
22 the Air Force of the United States, including appointments as Reserve
23 officers and warrant officers of the Army and Air Force and as officers and
24 warrant officers of the national Guard of the United States and of the Air
25 National Guard of the United States, any other provision of law to the
26 contrary notwithstanding.

COMMENT ON ALTERNATIVE VERSIONS OF SECTION 2(a)

Section 2(a) states the construction to be placed on a number of specific words and phrases presupposing the existence of a state of war when there is no longer a state of war, - for example "ally", "enemy" "prisoner of war" and "interned in a neutral country".

Differing suggestions have been made as to the best manner of dealing with these terms in the bill as applied to a situation in which there is no longer a state of war. The differences are as to:

(a) Whether or not the terms "ally", "enemy" and "neutral" ("interned in a neutral country") shall apply only as determined by the President in each case in accordance with standards to be stated in the bill, or whether, instead, there should be a definition in the bill, with no provision for Presidential determination, or whether there should be a combination of the two, namely, a definition accompanied by a provision for wider application by determinations of the President in accordance with a standard which should serve to broaden their application.

(b) The specific meaning to be given to certain other terms when there is no longer a state of war.

(c) Which other terms should be specifically dealt with in the bill.

Three versions of section 2(a) are therefore presented here.

The first version has these features: (a) As to "ally", "enemy" and "neutral" ("interned in a neutral country"), it gives no definition but provides for their determination by the President in particular cases in accordance with a standard stated in the bill; (b) It defines four other terms (or groups of terms) presupposing the existence of a state of war.

The second version has these features: (a) It defines "ally" and "enemy" (and their equivalents) without any provision for Presidential determination. (b) It specifically defines some but not all of the other terms presupposing the existence of a state of war. Among those not defined is "neutral".

The third version is a combination of the other two. (a) As to "ally", "enemy" and "neutral", it provides a definition (but narrower than that in the first version) and it also provides for Presidential determination, in accordance with a standard, in cases not falling within the definition. (b) It defines the four other groups of terms (omitted from the second version) presupposing the existence of a state of war, using for these the definitions of the first version.

The versions calling for Presidential determinations necessitate the inclusion of section 2(c), which is superfluous for the other version. It is assumed that the President will be free to delegate the making of determinations.

Opinions are particularly desired as to which of these versions is preferred, taking account of the differing practical purposes which the statutes in question are desired to serve. It will be of particular value if you will test these three versions by applying them to the varying factual situations which might arise under the provisions with which you are concerned.

The proponents of a Presidential determination say:

(a) Under any fixed definition there will be great doubt as to what the terms "ally", "enemy" and "neutral" mean in particular cases.

(b) Someone will have to resolve the doubt administratively for the purpose of applying the provision in particular cases.

(c) If authority is granted to the President to make determinations he can coordinate the applications of these terms by the various agencies concerned; he can make decisions in advance, when needed; and possible conflict within the Executive Branch and between the Executive Branch, the General Accounting Office and the courts will be reduced.

(d) The possibility of embarrassment in international relations as a result of the determinations will be minimized because the President will be free to delegate the authority to make determinations (subject to such supervision as he may wish to apply); the determinations will be made for specific narrow purposes; and the actual wording of the determination need not include the words "ally", "enemy" or "neutral".

(e) Some of these terms occur in penal provisions to which due-process requirements of certainty apply.

The proponents of a fixed definition, with no provision for Presidential determination, say:

(a) The provision for Presidential determination will cause embarrassment to the President and the Government.

(b) A fixed definition will have a reasonably clear application in most cases and therefore there is no real need to provide for Presidential determinations, considering the embarrassments which they might lead to.

1 (d) For the purpose of section 1 of the Act of May 29, 1945, ch. 135,
2 59 Stat. 225, as amended (31 U.S.C. 222c), and for the purpose of section 2
3 of the Act of December 28, 1945, ch. 597, 59 Stat. 662 (31 U.S.C. 222e),
4 the date of termination of a time of war and the establishment of peace
5 shall be the date which the President shall prescribe for those purposes,
6 notwithstanding any other termination of war or establishment of peace.

7 (e) For the purpose of section 1 of the Act of July 3, 1943, ch. 189,
8 57 Stat. 372, as amended (31 U.S.C. 223b), and for the purpose of section 1
9 of the Act of December 28, 1945, ch. 597, 59 Stat. 662 (31 U.S.C. 223d),
10 the date of the termination of a time of war and the establishment of peace
11 shall, with respect to accidents or incidents occurring after June 23,
12 1950, be the date which the President shall prescribe for those purposes,
13 notwithstanding any other termination of war or establishment of peace.

14
15 FIRST VERSION

16 SEC. 2 (a) During the national emergency proclaimed on December 16, 1950,
17 the terms dealt with in paragraphs (1) to (7) of this subsection, being terms
18 which presuppose the existence of a state of war, shall be construed as
19 follows in their application to situations other than a state of war, where
20 they appear in the provisions cited in subsection (d) of this section:

21 (1) The terms "allies", "nation with which the United States
22 may be allied in the prosecution of any war" and "associate nation"
23 ^{and governments} mean nations/determined by the President to be associated with the
24 United States in mutual defense activities.

25 (2) The terms "enemy", "enemies", "enemy of the United States
26 during the present war", and "government with which the United States
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1 is at war" mean nations and governments, as determined by the
2 President, whose international objectives are inimical to those of
3 the United States.

4 (3) The terms "belligerent action of an enemy", "attack by an enemy"
5 and "action of the enemy" mean the use, or threat of immediate use,
6 of physical or armed force by an enemy ("enemy" being determined in
7 accordance with paragraph (2)), or by any faction thereof or by
8 persons having or claiming any authority thereof.

9 (4) The terms "prisoner of war", "captured by an enemy",
10 "capture, detention or other restraint by an enemy during the present
11 war" and "taken by an enemy" mean detention by an enemy ("enemy" being
12 determined in accordance with paragraph (2)), when the detention
13 is made for reasons relating to the international situation at the
14 time or by reason of the nationality, official position or action
15 in course of duty of the person detained.

16 (5) The term "interned in a neutral country" means detention by
17 a country determined by the President to be, under the circumstances,
18 in a position analogous to that of a neutral.

19 (6) The terms "prosecution of war" and "conduct of war" mean
20 prosecution of a national defense program.

21 (7) The term "conditions of wartime production" means conditions
22 of production during the national emergency proclaimed on December 16,
23 1950.

24 (b) Any other terms presupposing the existence of a state of war,
25 used in the statutory provisions cited in subsection (d) of this section,
26 shall be construed in like manner to adapt them to conditions existing

1 during the national emergency proclaimed on December 16, 1950.

2 SECOND VERSION

3 SEC. 2(a) During the national emergency proclaimed on December 16,
4 1950, the terms dealt with in paragraphs (1) to (4) of this subsection,
5 being terms which presuppose the existence of a state of war, shall be
6 construed as follows in their application to situations other than
7 a state of war, where they appear in the provisions cited in subsection (d)
8 of this section:

9 (1) The terms "allies", "nation with which the United States
10 may be allied in the prosecution of any war" and "associate nation"
11 mean nations associated with the United States in mutual defense
12 activities.

13 (2) The terms "enemy", "enemies", "enemy of the United States
14 during the present war", and "government with which the United States
15 is at war" mean nations and governments whose armed forces are en-
16 gaged in armed conflict with the armed forces of the United States.

17 (3) The terms "prosecution of war" and "conduct of war" shall
18 include prosecution of any armed conflict in which the United States
19 is engaged.

20 (4) The term "conditions of wartime production" shall include con-
21 ditions of production during the national emergency proclaimed on
22 December 16, 1950.

23 (b) Any other terms presupposing the existence of a state of war, used
24 in the statutory provisions cited in subsection (d) of this section, shall
25 be construed in like manner to adapt them to conditions existing during the
26 national emergency proclaimed on December 16, 1950.

THIRD VERSION

1 SEC. 2 (a) During the national emergency proclaimed on December 16, 1950,
2 the terms dealt with in paragraphs (1) to (7) of this subsection, being terms
3 which presuppose the existence of a state of war, shall be construed as
4 follows in their application to situations other than a state of war, where
5 they appear in the provisions cited in subsection (d) of this section:

6 (1) The term "allies", "nation with which the United States may
7 be allied in the prosecution of any war" and "associate nation" mean
8 nations and governments associated with the United States in mutual
9 defense activities and any other nation or government the defense
10 of which is determined by the President to be important to the de-
11 fense of the United States.

12 (2) The terms "enemy", "enemies", "enemy of the United States
13 during the present war" and "government with which the United States
14 is at war" mean nations and governments whose armed forces are en-
15 gaged in armed conflict with the armed forces of the United States
16 and any other nation or government whose international objectives
17 are determined by the President to be inimical to those of the
18 United States.

19 (3) The terms "belligerent action of an enemy", "attack by an
20 enemy" and "action of the enemy" mean the use, or threat of immediate
21 use, of physical or armed force by an enemy ("enemy" being construed
22 or determined in accordance with paragraph (2)), or by any faction
23 thereof or by persons having or claiming any authority thereof.

24 (4) The terms "prisoner of war", "captured by an enemy",
25 "capture, detention or other restraint by an enemy during the present
26 war" and "taken by an enemy" mean detention by an enemy ("enemy" being

1 construed or determined in accordance with paragraph (2)), when the
2 detention is made for reasons relating to the international situation
3 at the time or by reason of the nationality, official position or
4 action in course of duty of the person detained.

5 (5) The term "interned in a neutral country" means detention by
6 a country determined by the President to be, under the circumstances,
7 in a position analogous to that of a neutral.

8 (6) The terms "prosecution of war" and "conduct of war" mean
9 prosecution of a national defense program.

10 (7) The term "conditions of wartime production" means conditions
11 of production during the national emergency proclaimed on December 16,
12 1950.

13 (b) Any other terms presupposing the existence of a state of war,
14 used in the statutory provisions cited in subsection (d) of this section,
15 shall be construed in like manner to adapt them to conditions existing
16 during the national emergency proclaimed on December 16, 1950.

17 (c) ^{END OF ALTERNATE VERSIONS} The determinations to be made by the President under this section
18 may be made from time to time, be modified or revoked at any time and be
19 made generally or for the purpose of particular statutory provisions or
20 particular situations.

21 (d) The statutory provisions referred to in subsections (a) and (b)
22 of this section are the following:

23 (1) Act of December 17, 1942, ch. 739, section 1, 56 Stat. 1053,
24 as amended (50 U.S.C. App. 1201).

25 (2) Act of May 18, 1933, ch. 32, section 5(m), 48 Stat. 62
26 (16 U.S.C. 831d(m)).

1 (3) Act of March 7, 1942, ch. 166, sections 1-12, 14, 15, 56
2 Stat. 143-147, as amended (50 U.S.C. App. 1001-1012, 1014, 1015) and
3 as extended by section 4(e) of the Act of June 24, 1948, ch. 625,
4 62 Stat. 608.

5 (4) Act of December 2, 1942, ch. 668, sections 101-106 and 201-
6 207, 56 Stat. 1033 (42 U.S.C. 1701-1706, 1711-1717).

7 (5) Act of July 28, 1945, ch. 328, section 5(b), 59 Stat. 505
8 (5 U.S.C. 801).

9 (6) Act of October 17, 1940, ch. 888, section 512, 54 Stat. 1178,
10 1190, as amended (50 U.S.C. App. 572).

11 (7) 18 U.S.C. 794, 2151, 2153, 2154 and 2388.

12 (8) Act of October 31, 1942, ch. 634, 56 Stat. 1013, (35 U.S.C.
13 89-96).

14 (9) Provisions referred to in the statutory provisions cited
15 in the preceding paragraphs of this subsection (d).

16 (e) Authority now conferred upon the Secretary of the Air Force
17 under the statutory provisions cited in this act is hereby extended
18 to the same extent as the authority of the Secretary of the Army
19 thereunder.
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1 SEC. 3. (a) The performance or occurrence, during the period of the
2 national emergency proclaimed on December 16, 1950 or such shorter period
3 as the Congress by concurrent resolution or the President may provide
4 either generally or for a particular statutory provision, of acts or events
5 of the kind giving rise to rights or benefits under a statutory provision
6 cited in subsections (b) or (c) of this section shall, for the purpose of
7 that statutory provision, be considered timely notwithstanding that the
8 provision confers rights or benefits only if such acts or events occur in
9 time of war or during the present war.

10 (b) The following statutory provisions, relating to preferences and
11 rights based on service in the Armed Forces, are referred to in subsection
12 (a) of this section:

13 (1) Act of October 17, 1942, ch. 615, section 1, 56 Stat. 796,
14 (36 U.S.C. 179).

15 (2) Act of August 1, 1947, ch. 426, sections 1 and 2, 61 Stat.
16 710 (36 U.S.C. 182a and 182b).

17 (3) Act of July 15, 1949, ch. 338, Title V, section 507, 63 Stat.
18 436 (42 U.S.C. 1477).

19 (4) Act of October 14, 1940, ch. 862, Title V, section 503 as
20 added by the Act of June 23, 1945, ch. 192, 59 Stat. 260 (42
21 U.S.C. 1573).

22 (5) Act of September 27, 1944, ch. 421, section 1, 58 Stat. 747,
23 as amended (43 U.S.C. 279).

24 (6) Act of December 21, 1928, ch. 42, sec. 9, 45 Stat. 1063,
25 as amended (43 U.S.C. 617h).

1 (7) Act of July 22, 1937, ch. 517, section 1, 50 Stat. 522, as
2 amended (7 U.S.C. 1001)

3 (c) The following statutory provisions, relating to claims and other
4 rights, are referred to in subsection (a) of this section:

5 (1) 28 U.S.C. 2680(j)

6 (2) Act of December 2, 1942, ch. 668, section 201, 56 Stat. 1033
7 (42 U.S.C. 1711).

8 (3) Act of July 28, 1945, ch. 328, section 5(b), 59 Stat. 505
9 (5 U.S.C. 801).

10 (4) Act of December 3, 1942, ch. 670, section 2, 56 Stat. 1038
11 (33 U.S.C. 855a)

12 (d) The ten year period provided for in section 4 of the Act of
13 September 27, 1944, cited in paragraph (5) of subsection (b) of this sec-
14 tion, is extended to two years following the period of the national emergency
15 proclaimed on December 16, 1950 or to such shorter period as the Congress
16 by concurrent resolution or the President may provide.

17 SEC. 4. If any provision of this act, or the application thereof to
18 any person or circumstances, is held invalid, the remaining provisions of
19 this act, or the application of such provision to other persons or cir-
20 cumstances, shall not be affected thereby.

21 SEC. 5. This act may be cited as the "Emergency Powers Continuation
22 Act".

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